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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES P. VON WOLSKE

Appeal 2009-013082
Application 10/663,899
Technology Center 2800

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejections of claims 11-15 and 20. Claims 11 and 12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Aubé (US 6,672,240 B1; issued Jan. 6, 2004). Claims 13 and 15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Wiggerman (US 5,339,225; issued Aug. 16, 1994). Claim 20 stands rejected under 35 U.S.C. § 103(a) as obvious over Wiggerman. Claims 1-10, 18, and 19 have been indicated as containing allowable subject matter. Claims 16 and 17 are withdrawn.¹ *See* App. Br. 2.

We affirm in part.

ANALYSIS

Appellant describes the invention as follows:

A navigation light system for a watercraft including an accessory light located at the bow or the stern that operates as a masthead or stern light, respectively, and that is located relative to the hull perimeter and shear line of the hull to reduce the glare perceived by an occupant of the watercraft. The glare is further reduced by the use of suitable masks to control the horizontal and vertical beam spread sectors of emitted light to minimize glare as perceived by an occupant of the watercraft. A docking light system that includes an accessory lamp that may be operated as a masthead light or as a stern light which is positioned to reduce glare as perceived by an operator of the watercraft and to increase visibility to other watercraft.

(Abstract).

¹ Claims 16 and 17 should be canceled by Examiner's Amendment. *See Ex parte Ghuman*, No. 2008-1175, 2008 WL 2109842 (BPAI May 1, 2008) (precedential).

We address claims 11 and 12 in Section I of the Analysis, and we address claims 13-15 and 20 in section II.

I.

Independent claim 11 is illustrative of claims 11 and 12, reading as follows:

11. A docking light system for a watercraft, comprising:
- first and second docking light fixtures;
 - first and second docking lamps positioned within the first and second docking light fixtures, respectively; and
 - first and second accessory lamps mounted to the first and second docking light fixtures;
- wherein the first and second accessory lamps collectively are a masthead light.

The Examiner interprets Aubé's pair of courtesy lights 11 as corresponding to the claimed first and second accessory lamps (Ans. 3). Appellant notes *inter alia* that claim 11 sets forth that "the first and second accessory lights *collectively* are a masthead light, so that both together operate as a masthead light" (App. Br. 8). Appellant argues that the present Specification expressly defines the term masthead lights: "[f]orward looking white navigation lights with a 225 degree horizontal spread are referred to as masthead lights" (App. Br. 5, citing Spec. 5:17-19). Appellant further argues that figures 1, 2, and 9 of Aubé depict gunwales 17 that block Aubé's courtesy lights 11 from being seen from either side of the boat (Ans. 7). As such, the gunwales prevent the lights from having a combined horizontal spread of 225 degrees, and therefore, the pair of courtesy lights cannot be deemed to constitute a masthead light (Ans. 8).

The Examiner responds that these arguments “circle around the intended uses of a masthead light,” and that the apparatus claim does not structurally distinguish the invention from Aubé’s boat (Ans. 6).

Appellant’s arguments are persuasive. Appellant’s Specification sets forth with reasonable clarity an objective definition for masthead light. In order to constitute a masthead light, the light(s) must be positioned in a manner such that a horizontal spread of 225 degrees is produced. The Examiner has not alleged that Aubé’s courtesy lights are capable of producing such a horizontal spread. Nor has the Examiner disputed Appellant’s contention that Aubé’s gunwale prevents the courtesy lights from producing such a horizontal spread. Office personnel must rely on Appellant’s disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). “[I]nterpreting what is *meant* by a word *in* a claim is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) (internal quotation marks and citations omitted; emphasis in original).

For the foregoing reasons, Appellant has persuaded us of error in the Examiner’s anticipation rejection of independent claim 11. Accordingly, we will not sustain the Examiner’s rejection of that claim or of claim 12 which depends from claim 11.

II.

Independent claim 13 is illustrative of claims 13-15 and 20,² reading as follows:

13. A docking light system for a watercraft, comprising:
 - a docking light fixture;
 - a docking lamp positioned within the docking light fixture; and
 - a navigation light provided on the docking light fixture.

The Examiner finds that Wiggerman's illuminated wand structure anticipates claim 13 (Ans. 4). Wiggerman's wand, which is specifically intended as a boat stern running light (Abstract), includes an upper light 40 encased within a globe lens structure 45, and a pair of lights 30, 35, which are respectively disposed within the bottom and top of the wand's tubular section (e.g., Fig. 2). The Examiner interprets the claimed docking lamp as reading on the upper globe light 40 and the claimed navigation light as reading on the top light 35 of the wand's tubular section.

Appellant argues that Wiggerman's upper globe light 40 cannot be interpreted as constituting a docking lamp because the "illuminated wand structure is *specifically intended* as a boat stern *running* light" (App. Br. 9, citing Wiggerman's Abstract), and Wiggerman's pole type running light is a "360 degree 'all around' light" (App. Br. 9). Appellant also contends that those skilled in the art understand that a running light cannot be interpreted as constituting a docking lamp because a running light is used by a boater while being moored so as to be seen by others, whereas "[d]ocking lights are

² Appellant argues claims 13-15 together as a group. Accordingly, we select independent claim 13 as representative of claims 13-15. See 37 C.F.R. § 41.37(c)(1)(vii).

bright, fixed direction lights that are used to enable the operator of the boat to see the dock as the boat approaches the landing site” (App. Br. 9-10).

Appellant’s arguments are not persuasive. Appellant has only provided evidence of what running lights’ and docking lights’ respective functions are. Appellant has not provided any evidence that a running light and a docking light necessarily have different luminosities, different spread angles, or any other objective differences. Nor has Appellant alleged any objective standards by which one could determine whether any of these alleged differences are satisfied. For example, Appellant has not alleged or provided any evidence that the Navigation Rules specify a minimum luminosity for docking lights or a maximum luminosity for running lights.

To the contrary, Appellant acknowledges that Navigation Rules are not fixed, but “could potentially change at any time” (App. Br. 7). Moreover, Appellant further acknowledges that “Applicant’s invention . . . is not intended to meet the strict letter of the Navigation Rules, but instead to provide an improved lighting system and method that maximizes the conspicuity and proper lookout functions, and that is superior to conventional lighting systems” (*id.*).

The closest that Appellant comes to providing an objective difference between running lights and docking lights is the assertion that “[d]ocking lights are usually large and relatively bright” (*see e.g.*, App. Br. 5, citing Spec. 37, line 21 and Fig. 33, which depicts docking light D being larger than navigation light 60). Even if we were to assume *arguendo* that this relative size is a necessary structural relationship, Wiggerman’s illuminated wand satisfies this relationship: the globe light 40 is depicted as being clearly larger than the top light 35 of the wand’s tubular section (*see* Fig. 2).

As such, the only remaining question is whether Wiggerman's upper, globe light 40 is capable of assisting a boater in docking. Wiggerman indicates that globe light 40 emits light "radiate outwardly in all directions" (col. 5, l. 12). That is, the globe light will emit light in the direction of any docking activity. Furthermore, Appellant has provided no evidence that the amount of light emitted by the globe light will be too dim under any ambient lighting condition to be of any assistance in docking.

For the foregoing reasons, Appellant has not persuaded us of error in the Examiner's anticipation rejection of representative claim 13. Accordingly, we will sustain the Examiner's rejection of that claim and also claims 14 and 15 which depend from claim 13.

With respect to the remaining rejection of claim 20, Appellant provides no patentability arguments directed to the Examiner's finding (*see* Ans. 5) that it would have been obvious to provide Wiggerman's watercraft light on a boat's hull. Rather, Appellant repeats the arguments directed to claim 13 and applies them to the obviousness rejection (App. Br. 10-11). For the reasons discussed above, then, we also sustain the obviousness rejection of claim 20.

DECISION

The Examiner's decision rejecting claims 13-15 and 20 is affirmed.

The Examiner's decision rejecting claims 11 and 12 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

Appeal 2009-013082
Application 10/663,899

AFFIRMED-IN-PART

gvw